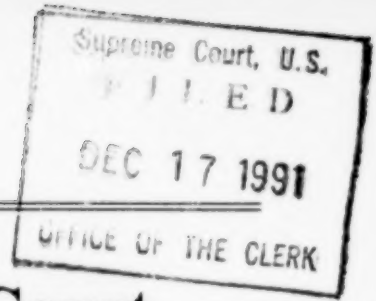


9
No. 90-1912



In the Supreme Court

OF THE

United States

OCTOBER TERM, 1991

STEPHANIE NORDLINGER,
Petitioner,

VS.

KENNETH HAHN, in his capacity as Tax
Assessor for Los Angeles County and the
COUNTY OF LOS ANGELES,
Respondents.

**BRIEF OF AMICUS CURIAE
CALIFORNIA ASSESSORS' ASSOCIATION
IN SUPPORT OF NEITHER PARTY**

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I

STATEMENT OF INTEREST AND SUMMARY OF ARGUMENT

A. Statement of Interest

The California Assessors' Association (hereinafter "Association") is a professional organization comprised of the duly elected Assessor from each of California's fifty-eight counties. The office of County Assessor is created by Article XI, Sections 1 and 4 of the California Constitution. The Assessor of each county is responsible for the assessment of all taxable property in the county except property which appears on the utility roll assessed by the state. California Revenue and Taxation Code Section 405. Assessors are county officers who exercise independent judgment

in the discharge of their duties. Petitioner and Respondents have consented to the filing of an Amicus Curiae brief by the Association. The Letters of Consent have been filed with the Court.

If Section 2(a) of Article XIII A of the California Constitution (hereinafter "Proposition 13") is declared to be unconstitutional, the members of the Association will be required to adopt an entirely different method of property assessment than that which has existed in California since 1978. This could require the reassessment of almost every parcel of real property in the entire state of California, at least once, and possibly many times in a starkly limited time frame.

The California State Board of Equalization has determined that there were 9,787,887 parcels of real property in California in the 1989-1990 fiscal year.¹

A myriad of collateral impacts would follow in the wake of this administrative maelstrom including refund determinations, escape assessments, assessment appeals, valuation of property constructed during the interim, and supplemental assessments. All of these tasks and many others, including billing and collection, would be required to be completed almost immediately, while current assessment requirements continued. It would be comparable to rebuilding an engine while it is running.

Inasmuch as the full force of this epochal transformation would impact the members of the Association, they are understandably concerned and will be instantly overwhelmed by an invalidating decision. Furthermore, they are the public officials from whom members of the community will seek advice and guidance, during the period of uncertainty and concern which will follow an extraordinary transition in the current method of property taxation. Finally, County Assessors are uniquely qualified to inform the Court of the technical problems engendered by the issues it will consider.

¹ California State Board of Equalization, A Report on Budgets, Workloads, and Assessment Appeals Activities in California Assessors' Offices, 1989-90 (May 1991). This report has been lodged with the Court.

B. Summary of Argument

The Association supports neither party. Its interest is limited to the manner in which the Court's decision will be implemented. It urges the Court to consider the monumental reverberations which will ensue from a declaration of invalidity, not for the purpose of influencing the Court's decision on the merits, but so that the Court will afford the California Courts, Legislature, and County Assessors a reasonable opportunity to develop orderly, rational, and equitable systems to comply with the Court's decision, if it invalidates Proposition 13.

II

ARGUMENT

These points are not arguments in the sense that they constitute reasons to support the position of either party. Instead, on the basis of the Association's neutrality, they detail the effects of an invalidating decision in as objective a manner as possible to assist the Court to determine timing and means of implementation, if the Court elects to do so.

A. Effects of Retroactivity

The law concerning the retroactivity or prospectivity of Supreme Court decisions is obviously in the process of refinement. *McKesson v. Div. of Alcoholic Beverages & Tobacco*, 110 S.Ct. 2238, 110 L.Ed. 2d 17 (1990); *American Trucking Associations, Inc. v. Smith*, 110 S.Ct. 2323, 110 L.Ed. 2d 148 (1990); *James B. Beam Distilling Co. v. Georgia*, 111 S.Ct. 2439, 115 L.Ed. 481 (1991). This case is similar to *American Trucking* insofar as it involves reliance on Proposition 13 for 13 years, major administrative disruption, and the potential of serious inequities. It differs from the pure refund cases because it involves recomputation of the taxable value of property, rather than invalidation of an entire tax.

The issue is further complicated by the procedural posture of this case. It comes to this Court on a demurrer to a complaint for declaratory relief (which may be procedurally flawed if California Revenue and Taxation Code 4808 does not apply) and for the

refund of taxes for a single year. *Nordlinger v. Lynch*, 225 Cal.App.3d 1259 (1990).

Prior to the enactment of Proposition 13 by voter initiative in 1978, Article XIII, Section 1 of the California Constitution provided that all property "be taxed in proportion to its value." This section was not repealed by the initiative. If the Court sweeps away Proposition 13 because it is deemed unconstitutional, its assessment provisions will cease to exist, and the former state constitutional provisions will once again apply. This means that, absent any qualification by the Court, County Assessors will be legally obliged to reassess millions of parcels of real property and increase property assessments up to 1992 valuations, based on current market data. Assuming this could be accomplished, it would result in an increase in property taxes estimated by the California Legislature to be between **11 to 13 Billion dollars** for the 1992-1993 tax year.²

In addition, County Assessors have a constitutional duty to levy "escape assessments" in cases of underassessment. This duty cannot be abridged by the Legislature. *Bauer-Schweitzer Malting Co. v. City & County of San Francisco*, 8 Cal. 3d 942 (1973); *Hewlett-Packard Co. v. County of Santa Clara*, 50 Cal.App.3d 74 (1975). In fact, Assessors are liable on their bonds for failure to impose escape assessments. California Revenue and Taxation Code Section 1361. California law presently provides that escape assessments shall be imposed for four previous years. California Revenue and Taxation Code Section 532. These requirements could easily entail as much as **30 Billion dollars** in back tax liability, with attendant public turmoil, outrage, and serious hardship to people who could not afford, or are unable to pay, unanticipated major tax increases.

²Assembly Office of Research for the Assembly Revenue and Taxation Committee, Legal Challenges to Proposition 13: Implications for California (October 1991) p. 24; Report of the Senate Commission on Property Tax Equity and Revenue to the California State Senate (Pursuant to State Resolutions 42 and 8) (June 1991) p. 4. These reports have been lodged with the Court.

California requires an individual appraisal for each and every parcel of property in support of its assessment. California Revenue and Taxation Code Sections 401 et seq. The appraisals of many of these properties, such as skyscrapers, factories and movie studios, often require months and involve extremely sophisticated analyses. Sometimes even the appraisal of a single family house mandates extensive study and research. As indicated above, there are 9,787,887 parcels of real property in California, most of which will be required to be reappraised.

The total number of permanent employees in all of the Assessors offices in the state is 5,268, of which only 1,736 are property appraisers.³

This means, on the basis of simple arithmetic, that each public appraiser would be required to reappraise at least 5,638 properties to bring the Assessment Roll up to current market value, compared to a current average annual workload of 750 parcels per appraiser. Even with a swift response by the Legislature and the provision of adequate resources, it would take years to reassess all of these properties and institute an ad valorem assessment system. It is unlikely that Assessors can catch up in this decade.

The problem worsens. Property owners in California are entitled to appeal the amounts of their assessments to Assessment Appeals Boards. California Revenue and Taxation Code Section 1601. Unless these appeals are heard within two years, the property owner's value assertion is binding. California Revenue and Taxation Code 1604 (c). Many of these hearings are mini-trials involving expert witnesses, legal counsel, cross-examination and argument. Members of the Assessors' staffs are required to defer their assessment duties in order to attend and testify in support of their appraisals. Assuming the disparities in values contained in Appendix E to the Petition for Writ of Certiorari are correct, appraisals would often increase assessments ten fold or more. An avalanche of assessment appeals would follow inexorably.

³California State Board of Equalization, A Report on Budgets, Workloads, and Assessment Appeals Activities in California Assessors' Offices, 1989-90 (May 1991) p. 2.

Although this scenario is dire in the extreme, there are many strategies which may be employed to ameliorate these problems. The reports cited previously in footnote 2 contain numerous suggestions for legislative response. County Assessors can and will, as they did when Proposition 13 was enacted, discharge their duties in a comprehensive and efficient manner, but they and the Legislature must be afforded some leeway to prevent paralysis of the property tax system in California if Proposition 13 is summarily vacated with immediate and retroactive effect.

B. Effects of a Tax Rollback

In *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County*, 488 U.S. 336, 346, 109 S.Ct. 633, 102 L.Ed. 2d 688 (1989), the Court stated "A taxpayer in this situation may not be remitted by the State to the remedy of seeking to have assessments of the undervalued property raised." This statement, although not necessarily applicable here, raises the unlikely possibility that the Court might be urged to roll back property assessments to their 1975 levels and authorize corresponding tax reductions and refunds. This would result in a yearly reduction in property tax revenues of as much as **10 Billion Dollars**.⁴

Not only would this have a catastrophic impact on local governments providing essential services such as education, police and fire protection, and health, which are already reeling under disabling deficits, but a rollback would create a corollary administrative monstrosity for Assessors who would be required to recalculate the entire roll back to 1975-76 values. Although many of these values could be found in prior records, Assessors would have to establish values, for improvements made to the properties, parcels created during the last thirteen years, and structures and property types that did not exist in 1975. For example, it would require painfully tortured calculations to hypothecate the value of a building constructed in 1990 back to 1975. The ramifications are infinite.

⁴ Assembly Office of Research for the Assembly Revenue and Taxation Committee, Legal Challenges to Proposition 13: Implications for California (October 1991), p. 25.

To place yet another straw on the camel's back, California law allows taxpayers to claim refunds for four previous years and recover interest on refunds.⁵ California Revenue and Taxation Code Section 5097. Local government in California would be financially eviscerated and the calculations and paperwork, already unmanageable, would be quadrupled by the necessity to recalculate assessed values for the periods claimed in the refunds.

In the dissent in *James B. Beam Distilling Co. v. Georgia*, supra, 111 S.Ct. 2439 at p. 2455, Justice O'Connor deplores the potential liability of the State of Georgia in the amount of 30 Million dollars. In this case the potential liability is literally one thousand times greater.

C. Alternative Remedies

As daunting as the problems of rewriting thirteen years of taxation history in California may be, they are capable of solution given reasonable time and opportunity to address them. If this Court invalidates Proposition 13 and directs the State to adhere to the *Allegheny Pittsburgh Coal* standard of "the seasonable attainment of a rough equity in tax treatment of similarly situated property owners" (488 U.S. 336 at 343), this objective can be achieved, but it will require considerable breathing room, and a realistic schedule.

As the reports cited previously in footnote 2 demonstrate, both the California Senate and Assembly have studied remedial measures in impressive detail, and have garnered much of the data necessary to legislate equitable solutions to this issue. Similarly, the members of the California Assessors' Association and the California State Board of Equalization have devoted prodigious

⁵ For example, *R. H. Macy & Co. Inc.*, although it dismissed its petition to this Court, *R. H. Macy & Co. Inc. v. Contra Costa County* (No. 90-1603) (Petition dismissed June 23, 1991), has nonetheless filed extensive refund claims for the 1985-86, 1986-87, 1987-88, 1988-89, 1989-90 and 1990-91 tax years predicated upon the outcome of this case. A copy of the face sheet of one such claim is attached as APPENDIX B.

efforts to an evaluation of the means by which they can respond to an invalidating decision effectively and fairly.

Conversely, this Court, by definition, does not have the capacity, nor would it wish to attempt to unscramble the intimidating conundrums posed by either roll back or roll forward of almost ten million property assessments. The parties, in recognition of the stunning implications of an invalidation decision have not sought explicit relief. Although emphasis on the extensive practical effects of a decision may conflict with the symmetry of constitutional principle, it is possible for the Court to accommodate both concepts by allowing some respite during which inexorable realities can be resolved, or at least accommodated.

III

CONCLUSION

The Association respectfully urges that this Court, if it determines to invalidate Proposition 13 and does not provide for prospectivity, refer the case back to the California Courts to determine the manner in which the decision may be implemented as was done in *American Trucking Associations*, *Allegheny Pittsburgh Coal*, and *Mc Kesson*.

This is the only way that the Gordian knot created by thirteen years of property assessment under Proposition 13 can even begin to be unraveled and massive fiscal dislocations calculated and allocated equitably.

Respectfully Submitted,

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Telephone: (415) 499-6117
Attorneys for Amicus Curiae
California Assessors Association

* Counsel of Record

APPENDIX A

California Revenue and Taxation Code Section 401:

§ 401. Assessed value

Every assessor shall assess all property subject to general property taxation at its full value.

California Revenue and Taxation Code Section 405:

§ 405. Annual assessment; jointly assessed property

(a) Annually, the assessor shall assess all the taxable property in his county, except state-assessed property, to the persons owning, claiming, possessing, or controlling it on the lien date.

The assessor may assess the property on the secured roll to the person owning, claiming, possessing, or controlling it for the ensuing fiscal year.

(b) The assessor may assess all taxable property in his county on the unsecured roll jointly to both the lessee and lessor of such property.

(c) Notices of assessment and tax bills relating to jointly assessed property on the unsecured roll shall be mailed to both the lessee and the lessor at their latest addresses known to the assessor.

California Revenue and Taxation Code Section 532:

§ 532. Limitations

Any assessment to which the penalty provided for in Section 504 must be added shall be made within six years after July 1 of the assessment year in which the property escaped taxation or was underassessed. Any other assessment made pursuant to Article 3 (commencing with Section 501) of this chapter, or pursuant to this article shall be made within four years after July 1 of the assessment year in which the property escaped taxation or was underassessed.

California Revenue and Taxation Code Section 1361:

§ 1361. Escaped property; liability on bond

The assessor and his sureties are liable on his official bond for all taxes on property which is unassessed through his wilful failure or neglect.

California Revenue and Taxation Code Section 1601:

§ 1601. County board, definition; notice of period for acceptance of protests, time and place of meeting to equalize assessments

(a) For purposes of this article, "county board" shall mean a county board of supervisors meeting as a county board of equalization or an assessment appeals board.

(b) In counties of the first class, the clerk shall give notice of the time the county board will meet to equalize assessments by publication in a newspaper.

(c) In all other counties, immediately upon delivery of the roll to the auditor, the clerk shall give notice of the period during which assessment protests will be accepted, the place where they may be filed, and the time the county board will meet to equalize assessments by publication in a newspaper, if any is printed in the county, or, if none, as directed by the board of supervisors.

California Revenue and Taxation Code Section 1604(c):

§ 1604. County board; annual meeting; time; effect of untimely hearing

* * *

(c) If the county assessment appeals board fails to hear evidence and fails to make a final determination on the application for reduction in assessment of property within two years of the timely filing of the application, the taxpayer's opinion of market value as reflected on the application for reduction in assessment shall be the value upon which taxes are to be levied

for the tax year covered by the application, unless the taxpayer and the county assessment appeals board mutually agree in writing to an extension of time for the hearing. The reduction in assessment reflecting the taxpayer's opinion of market value shall not be made, however, until two years after the close of the filing period during which the timely application was filed. Further, this subdivision shall not apply to applications for reductions in assessments of property where the taxpayer has failed to provide full and complete information as required by law or where litigation is pending directly relating to the issues involved in the application. This subdivision is only applicable to applications filed on or after January 1, 1983.

* * *

California Revenue and Taxation Code Section 4808:

§ 4808. Actions challenging legality or constitutionality of tax or assessment; declaratory relief; time limitation; parties; payment of tax; application of section

Notwithstanding any provision of law to the contrary, any taxpayer may, no later than 30 days after the delinquency date of a property tax bill or any installment thereof, seek declaratory relief in the superior court in the county in which the property is located alleging that the locally assessed property taxes have been illegally or unconstitutionally assessed or collected or are to be so assessed or collected.

Any action alleging an illegal or unconstitutional method of valuation or similar matter shall name as respondent the assessor of the county in which the property is located. An action alleging an unconstitutional or illegal tax rate shall name as respondent the auditor-controller of such county. In the event the action involves the validity of a rule or regulation adopted by the State Board of Equalization, the board shall be named as a respondent. The relief granted pursuant to this section shall be limited to a declaration that the taxes assessed or collected or to be assessed or collected are unconstitutional or otherwise legally invalid.

This section shall not be interpreted to allow a taxpayer to postpone payment of property taxes pending the decision of the court. All assessment and collection provisions of this division shall continue to apply to properties affected by this section.

This section shall be applicable only in instances where the alleged illegal or unconstitutional assessment or collection occurs as the direct result of a change in administrative regulations or statutory or constitutional law that became effective not more than 12 months prior to the date the action is initiated by the taxpayer.

The procedure for obtaining a declaratory relief judgment under this section shall be the same as that used to obtain a writ of mandate.

California Revenue and Taxation Code Section 5097:

§ 5097. Claims; verification; filing time

(a) No order for a refund under this article shall be made, except on a claim:

(1) Verified by the person who paid the tax, his or her guardian, executor, or administrator.

(2) Filed within four years after making of the payment sought to be refunded or within one year after the mailing of notice as prescribed in Section 2635, or the period agreed to as provided in Section 532.1, whichever is later.

(b) An application for a reduction in an assessment filed pursuant to Section 1603 shall also constitute a sufficient claim for refund under this section if the applicant states in the application that the application is intended to constitute a claim for refund. If the applicant does not so state, he or she may thereafter and within the period provided in paragraph (2) of subdivision (a) file a separate claim for refund of taxes extended on the assessment which applicant applied to have reduced pursuant to Section 1603 or Section 1604.

(c) If an application for equalization of an escape assessment is filed pursuant to Section 1603, a claim may be filed on any

taxes resulting from the escape assessment or the original assessment to which the escape relates within the period provided in paragraph (2) of subdivision (a) or within 60 days from the date the board of equalization makes its final determination on the application, whichever is later.

B-1

APPENDIX B

R. H. Macy & Co., Inc.

Eleven Penn Plaza • New York, NY 10001-2088

December 3, 1991

Certified Mail #P 423 203 054

Corporate Taxes
Sixth Floor

Board of Supervisors
County of Marin
Room 310, Civic Center
San Rafael, CA 94903

Re: R. H. Macy & Co., Inc.

Parcel No. - 24-032-22

For the Tax Roll of - 1985/86 Suppl.

1986/87, 1987/88, 1988/89,

1989/90 and 1990/91 Regular

Dear Sir:

Enclosed is a claim for refund for the above-named entity and years.

This claim primarily involves the constitutionality of the provisions of Article XIII A of the California Constitution. Inasmuch as the claim is dependent upon the outcome of pending litigation, we understand that the claim will not be denied until the litigation in a final appellate court decision determines the matter one way or the other. If that is not the case, we would appreciate an opportunity to discuss the handling of this claim *prior* to any denial.

B-2

Would you be kind enough to confirm receipt of the claim by signing the enclosed copy of this letter and returning it in the envelope provided. If you need anything further, please contact the undersigned.

Very truly yours,

DAN JORDAN
Daniel F. Jordan
Director of Property Taxes

DFJ/tm
Enclosure

cc: Charles R. Ajalat

ACKNOWLEDGEMENT

Claim for Refund Received and timely filed.

COUNTY OF _____ By _____